

A Hungarian Judge Seeks Protection from the CJEU – Part II

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In 2012, Hungary introduced a unique system of judicial administration that was criticized by domestic and international actors. This criticism has been validated by events since then which have shown that the National Judicial Council, the highest collective body of judges, is practically unable to counter-balance the broad powers of the President of the National Judicial Office (NJO). This has caused tensions between judges and the judicial administration, something that was predictable in 2012 when the system was introduced and has led to what can only be described as a 'constitutional crisis'. The conflict between judicial self-governance and judicial administration advanced to a European level in 2019 when the [Council of the European Union expressed its strong concerns](#) about the powers of the Office and recommended that judicial independence be strengthened. [A previous article](#) analysed the preliminary request of a Hungarian judge questioning the Hungarian court administration interfering with judicial independence; this second part will provide insight on the background and development of this conflict.

In 1997, Hungary introduced a new court administration model in which the Council of Justice had a leading role in all significant fields of judicial administration, including recruitment, promotion, training of judges and budgeting. As a result, the judiciary gained the power to administer itself, but most judges had no practical management experience. Key positions were awarded to regional court presidents and vice-presidents who had some experience, but their position highlighted the system's shortcomings and caused malfunctions in the system at an early stage (they had a majority in the Council that was intended to supervise their activity).

Despite one-third of all Hungarian judges working in Budapest and the central region, these courts were always underrepresented in the Council and their problems were neglected by the judicial administration. The busiest courts struggled with gaps in resources. The Metropolitan Court, which is the largest court in Hungary, has almost 800 judges and the Budapest Environs Court has more than 280 judges. By comparison, in the smallest regional courts there are only 40-50 judges. Judges in the central region deal with enormous caseloads, large numbers of high-profile cases, and work under unfavourable conditions compared to judges in other parts of the country. This led to excessively long court proceedings and tensions within the judiciary. Reform, therefore, was inevitable.

The new model of court administration: a ticking bomb

Having a constitutional majority, the Hungarian Government introduced a completely new model in 2012 and gave the most important powers to one person, the NJO President. The legislation argued that the newly established National Judicial Council, consisting of 14 judges elected by their peers and the president of the Supreme Court (*Kúria*), would efficiently balance the powers of the NJO President with advisory and supervisory competences. Furthermore, the NJO President is a judge, therefore the position should not represent a threat to judicial independence. Unfortunately, this turned out to be a false promise. In 2011, when Ms Tünde Handó was elected as the NJO President, there was no competitive recruitment process for the position, Ms Handó's plans and intentions were unknown, and there was no judicial body that could form a prior opinion about her competences as the Council was only established months later. The NJO President was appointed at the discretion of the legislative, she is responsible for and may be dismissed by the legislative body. The position can therefore be seen as closer to a political appointee than to a judge and should be viewed as a high-ranking official of the administration.

The National Judicial Council, presented by the legislation as the balance to the NJO President's powers, was designed to be weak with a rotating presidency (the head of council changes every 6 months), the '*de jure*' independent but '*de facto*' inaccessible budget, and a lack of staff members. The efficiency of the Council is further weakened as several members of the Council are court leaders who are directly or indirectly subservient to the NJO President, whom the Council should supervise. Between 2012 and 2018, the Council Secretariat was run by a close staff member of Ms Handó, and the Council agenda seemed to be compiled by the NJO President (who only has consultative rights in the meetings). During this period, Ms Handó practically acted as chair of the body which allowed her to appoint judicial leaders with no local support (one of the few real powers of the Council is to allow appointments when local judges don't support the candidate).

In Hungary, regional court presidents have an enormous influence on judges. They can initiate disciplinary proceedings, they can decide on bonuses and extra remuneration, they make the final decision in judges' evaluation processes, they make decisions about judges' working conditions, and make decisions related to the case allocation. Cases shall be allocated randomly according to a scheme published beforehand, but there is still no automated case allocation system in Hungary, therefore court leaders assign cases manually. Because of their great influence, court presidents are crucial stakeholders in court administration. To compensate for the broad powers they hold, the law regulates that court presidents shall be appointed by open application where applicants need to present their aims and objectives. All judges in the relevant court then vote in a secret ballot to elect the president. The NJO President can only appoint the candidate with most of the supportive votes, but only if the candidate has more than 50% support. A candidate that does not meet these criteria shall only be appointed with the Council's approval.

Unfortunately, there is also a loophole as the NJO President can annul the application even if there is a suitable candidate. Since 2012, the appointment of supported court presidents has been frequently denied by Ms Handó, even if they were applying alone for the position supported by the judges. In these cases, after an application is repeatedly cancelled, the NJO President commissions someone as interim president for one year. During this year the interim president received support from the central administration, which made it clear for the judges how to vote at the next election if they want to have better working conditions, new judicial positions and a reasonable caseload.

From mid-2016 onwards there have been signs of growing tension between judges and the court administration. Some members of the Council from the central region started to oppose and disagree with the NJO President regarding the allocation of judicial positions. In some cases, the Council was not supporting the deviation from the judicial self-governing bodies, and therefore the NJO President annulled the judicial applications. Where the presidential applicants were critical of her, she refused to appoint them. For example, the President of the Metropolitan Court, Mr Sándor Fazekas, applied as single candidate to continue in the position for another 6 years with the support of 70% of judges. However, he was also member of the Council and had confronted Ms Handó on some occasions, so it was not surprising that his application was also rejected on 4 January 2018.

On 15 January 2018 elections were held for new members of the National Judicial Council. The electorate, composed of 130 judges, deliberately voted on candidates who criticized Ms Handó and were not serving in a high administrative position subordinate to her. The majority of loyal court leaders applying for Council membership received a low number of votes. At the same time the judicial conferences of two courts (including the Metropolitan Court) turned to the newly elected Council to scrutinize the NJO President's practise of annulling court leader and judicial applications. In Spring 2018, the Council was about to meet to discuss the report of its fact-finding committee when Ms. Handó initiated an extensive attack against the Council and its members.

From conflict to constitutional crisis

In April 2018, five members of the Council suddenly resigned due to "increased workload" and "family-related reasons". Four of the five resigning members were court leaders and two reported directly to Ms Handó. Many alternate members, who succeeded the resigning members, refused to take the mandate. Two of them reported illicit pressure by their court presidents and informally many other resigning members referred to illicit pressure from the top. When there were only 11 members left, the NJO President declared the Council illegitimate because not all court levels were represented, despite this not being part of the legal regulations. The NJO President soon cut all cooperation with the Council and started to de-legitimize it – the very body that was supposed to supervise her. The President of the *Kúria* and the Minister of Justice, who participates in sessions on consultative rights, declared that they found the Council to be functioning legitimately. Ms Handó refused to send any proposals prescribed in law, refused to report to the Council, refused to give

access to administration files, and did not sign the budgetary agreement with the Council. In June 2018, [in an article published by the Institute for Legal Studies of the Hungarian Academy of Science](#), I have already formulated that this situation leads to a constitutional crisis. Since then, the conflict has worsened.

Members of the Council have become targets of the government-friendly media and are attacked through defamatory articles regarding their personal life and their professional record. Five disciplinary proceedings have been initiated against members of the Council, but they have been stopped by a regulation which requires the consent of the Council for disciplinary action to be taken against its members. Several members were dismissed from professional working groups where they were experts before, lost their membership in the bar examination committee, were banned from trainings as lecturers, and participants and their premiums were decreased or even refused. The [NJO President has also proposed a legislation](#) to weaken the Council and change the composition in her favour.

To substitute the resigned members of the Council, [in October 2018 an election was organized but it was sabotaged](#) primarily by court leaders subordinated to the NJO President. At the election, preliminary candidates suddenly refused the nomination, while other judges who would have undertaken the candidacy were prevented by court leaders from becoming candidates. Many participants expressed their concern about the ballot not being secret and the vote count not being managed appropriately. This scandalous election fraud led to the biggest open protest of more than 300 judges, supported by the Hungarian Association of Judges (MABIE). Following this, the NJO President and their subordinate court presidents escalated persecution, of Council members as well as members of MABIE.

Based on a [detailed report](#) the Council turned to the legislative branch, the Parliament, and [proposed the dismissal of the NJO President](#). This allowed the Government to solve the problem by dismissing the head of judicial administration who led the judiciary into this crisis. However, political loyalty seemed to be more important than the legality and stability of the judicial system as the Parliament – without debate – refused to dismiss Ms Handó, and with this the Hungarian Judiciary was captured by the legislation. After these series of events it seems unavoidable that Hungarian judges who fear persecution and are subject to threats against their independence – similar to their Polish and Romanian colleagues – will seek aid and justice before the CJEU, even if they are aware of the fact, that the ‘rule of law backsliding’ cannot be stopped by the Court of Justice alone.

